IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:

ALL-CLAD METALCRAFTERS, LLC., COOKWARE MARKETING AND SALES PRACTICES LITIGATION — No. 21-mc-491

Transcript of Settlement Fairness Hearing held via Zoom on Thursday, January 26, 2023, before Honorable J. Nicholas Ranjan, United States District Judge.

APPEARANCES:

For All-Clad: Buchanan, Ingersoll & Rooney, PC
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Melissa Bayly, Esq.

For the Plaintiffs: Milberg, Coleman, Bryson, Phillips & Grossman, PLLC
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P R O C E E D I N G S

THE COURT: All right. Good morning, everyone. We're here today for a class action settlement fairness hearing in this matter. I'm the presiding judge, Judge Ranjan here. It's nice to see counsel again. Before we get started, there are a couple housekeeping issues I want to take care of.

One is this hearing is being held remotely by Zoom. I would caution everyone who is on this line when you're not speaking to mute yourselves. That will prevent interference and allow the court reporter to do her job.

I also caution everyone that under our local rules, recording of this proceeding or streaming of this proceeding is prohibited. So to the extent anyone has started recording, I ask you to stop that and to refrain from recording this proceeding at any time.

And then the last thing is we're holding this proceeding by Zoom in part because the class notice indicated that that's what I was going to do. But, for the record, I hate Zoom. I have come to despise it very much. So except for proceedings like this where you have a fairness hearing with certain members of a national class action that either want to observe or participate in the proceeding. And so that's one of the reasons why I have held this by Zoom today.

There may be technical issues I assume always pop up, so please bear with us. But I very intentionally wanted to do

this remotely here today to encourage participation or observation by anyone. So with that, why don't we start by having counsel enter their appearances.

I'll begin with class counsel. And, also, if counsel for the parties can also indicate to me who might be addressing the Court today. I don't know if multiple attorneys will do so, but that would be helpful for me.

MS. SOFFIN: Good morning, Your Honor. Rachel Soffin, one of class counsel from Milberg. I'm also here with my partners, Harper Segui and Marty Geer. And I will be doing the majority of the talking, unless I say something wrong that needs to be corrected.

THE COURT: All right. Sounds good. Good to see all of you again today. And then for the defendant?

MR. DALTON: Sure. Good morning, Judge. Chris Dalton from Buchanan, Ingersoll & Rooney in our New Jersey office. With me are my colleagues Melissa Bayly and Sophie Marino, who is an in-house counsel with Group SEB in Lyon, France. I'll be doing the talking, as necessary.

THE COURT: All right. Great. Good morning. Good to see you again. I would note that we had one objector in this case, Mr. Andren, who retained counsel and filed the appropriate notice of intent to participate. I think I see Mr. Andren's counsel on the call here today, Mr. Schulman. Am I right? You're representing the objector, Mr. Andren?

MR. SCHULMAN: Good morning, Your Honor. That's correct. Adam Schulman for Objector Andren.

THE COURT: As I recall -- maybe counsel can correct me if I'm wrong. That was the only filing with respect to a notice of intent to appear that I saw on the record. So certainly, Mr. Schulman, when we get to that portion of the hearing today, to the extent you would like to address the Court, that's fine by me.

It looks like you've complied with the prior order with respect to making a record of an intent to appear. I did not receive any other filings within the deadlines of any other individuals who would like to appear and speak here today.

And so everyone who is on this call is more than welcome to observe. But pursuant to my prior order, only individuals who filed the notice of intent to appear will be allowed to address the Court today.

Before we get started, I did want to confirm with counsel whether or not anyone intended to present any evidence, exhibits, witness testimony, anything of that nature. Miss Soffin, from class counsel's perspective?

MS. SOFFIN: Yes, Your Honor. I don't have any new exhibits, other than updated claims data that we received from Angeion yesterday. And, also, Class Representative Clare Lavetio is here, in the event Your Honor would like to hear

from her. She's certainly not intending to speak, unless you have any questions.

THE COURT: Okay. All right. Thank you. Mr. Dalton, from the defense side?

MR. DALTON: No, Your Honor. We don't intend to present anything other than to respond to any questions that the Court may have.

THE COURT: All right. Thank you. I observed, reviewed all the materials. I found them to be very helpful. That included the briefs and motions in support of approvals, as well as the motion for attorney's fees. I reviewed the objections that were filed, including the various objections filed by Mr. Schulman on behalf of Mr. Andren and the responses. And I've reviewed the various exhibits.

My plan here today would be -- I think it probably makes sense for me just to maybe upfront kind of ask the questions that I had. They might be a little bit scatter shot, but I thought I would throw out the questions I had or areas of inquiry that I have.

Then I would let class counsel, Miss Soffin, you know, you can make a presentation, provide updated information and maybe address some of those questions. Mr. Dalton, you can do the same, if appropriate.

And then after that, to the extent Mr. Schulman wishes to make a statement or any argument with respect to the

objection he filed, I'll hear from him. And then conclude, again, by hearing any argument from counsel or any response to that objection.

So with that as the roadmap, let me just -- again, I apologize for it to be scatter shot. But as I was preparing, these are the kinds of inquiry on my mind that it would be helpful for counsel to address. One, Miss Soffin, you alluded to it before, updated statistics and updated claims data. On that topic, one thing that I'm not entirely clear on is the class size or the estimated class size in this case.

I think I get a grasp on it, but it would be helpful for there to be some confirmation. When I say I was a little bit unclear on it, I think it was from one of the declarations by Angeion that indicated roughly about 300,000 addresses, about 240,000 E-mail addresses and I think another 59,000 mailing addresses that they had.

And then, in addition, it appeared that there were E-mails sent by Amazon, Williams Sonoma and Crate and Barrel. So the question in my mind might be, just as a point of confirmation, whether any of that, the third-party E-mails are duplicative of the E-mails that Angeion sent directly to the class or if they're all kind of -- I should aggregate all those numbers to determine the class size in this case.

And then on the data, just an update on the number of claims. I would be curious of class counsel's prediction of

about -- I think it was 5,000 claims per week held true over the last few weeks, because I think the last data I saw was from early January.

So there has been a couple more weeks of data. Within that, also it would be helpful for me to have a breakdown of the claims with respect to the option selected as it's updated. And also on the data point -- and I don't know. Counsel may not know this. But when I looked at the opt-outs, I think there were about 27 opt-outs. I certainly would appreciate confirmation on that.

When I looked at the opt-outs, it looked like there could have been duplicative opt-outs. For example, I saw one person's name appear a couple of times. I saw several people that looked to have the same last name. So I would infer that to potentially be spouses or husband and wife or related in some way. So any additional information on that would be helpful.

And then confirmation. I don't think anything has changed, but I believe there were two objections. That's sort of one area of inquiry, just kind of an update, clarification on the data. The second, of course, mailing. I think I have a good handle on the notice that went out to the class and the efforts of the class administrator to send the notice out by mail and to do the re-mailing. Certainly I think maybe a refresher on that might be helpful. And any time there is an

E-mail notice, I do have some concerns over how much of that might go to SPAM. I don't know if that's something that is or could be addressed in this proceeding.

The other area of inquiry is, I guess, I would like a better sense of the process for the refund and replacement products, including the dispute resolution aspect of that and also the criteria for assessing the sharp edges defect, whether or not All-Clad or the parties have discussed the criteria for it.

In my mind, I think that's one of the most critical parts of the settlement here. It seems to me the greatest value that goes to the class members in this case, the opportunity to have what appears to be a brand new premium replacement product. But that, of course, depends on a determination of the prior product having sharp edges or not.

I would like to get a better sense as to whether or not there are criteria, whether counsel envisions there being gray areas or problems in assessing, you know, what has a sharp edge or doesn't have a sharp edge. And also with respect to the dispute resolution proceedings on that, whether or not it's envisioned that class counsel would remain involved and be part of that meet-and-confer process, if there are any individuals who submit claims and dispute --

Mr. Dalton, can you hear me? Can everyone else hear me?

MR. DALTON: I'm sorry, Judge. You cut out on me.

The predicted technical failure has occurred.

THE COURT: Okay. Can you hear me now?

MR. DALTON: I can, indeed. I'm sorry. Your Honor was asking for an outline, if you will, of the process for the claim submission, the determination of the sharp edges issue. And then my computer decided to cut you off.

THE COURT: Okay. So just to back up --

MR. DALTON: Sorry.

THE COURT: I would like to know whether or not class counsel would participate in the meet-and-confer process to resolve any disputes that anyone might have pertaining to All-Clad's determination of sharp edges or lack thereof.

The other area of inquiry would be on valuation. And when I talk about valuation to the class, I would like to look at it maybe -- not in a different way, but maybe put a more final level of detail as to what I'm thinking of here. And that would be I would like to get a better sense of the costs to All-Clad, specifically the products, product costs and also the shipping costs.

As I understand the settlement, All-Clad covers the shipping by the customer, the class member, to send a defective product back to All-Clad. And then All-Clad covers the shipping of the new product. So I think it would be helpful for me to understand not only the cost of the product, anticipated costs of shipping and any other costs that are

incurred or anticipated to be incurred by All-Clad as part of this settlement, because I think that will help me assess the value of the settlement here.

I noted from one of the filings -- it might have been the Angeion declaration that they fielded about, I think -- I think it was about 500 calls by various class members or potential class members.

I would like to get a sense, to the extent class counsel knows or both counsel knows, as to whether there are any kind of common questions that were raised by class members to either the class administrator or to class counsel directly, common questions or common concerns that might have been addressed and any responses that Angeion or counsel gave to any potential class members.

I know that there was a settlement, also, with respect to the one other objector. I can't remember his name. I think it began with a K. And I believe his objection pertained to the delay in terms of getting the new products, which I found to be actually something I would have never thought about. But being without your pots and pans for 30 days or a few months or however long is actually a legitimate issue. So I understand from the filings that there was a discussion over that and maybe a resolution there. So any information on that would be helpful.

And then with respect to the attorney's fees and

service fee awards, as I think I told counsel early on in this case, on service fee awards I really look to see what the real value is of the named plaintiffs with respect to their involvement in the case before I award any kind of service fees. I'm not inclined to award a service fee simply because those types of fees have been awarded in other cases.

So I'm looking for actual -- not only value, but, really, as I think as counsel knows, the named class members are fiduciaries of the class and really are the people that are designed to ensure that there are no principal agent problems with respect to the relationship between class counsel and the class.

And so to the extent -- and I think, Miss Soffin, you mentioned one of the named plaintiffs is on the line. Certainly she can address me. Or, Miss Soffin, maybe you can address her role, as well as the other named plaintiffs' roles in the class.

And then the last thing is, obviously, the attorney's fee motion. And I think the request contemplates an award that would have within it a multiplier of about 1.5. I would like to get a better understanding as to the rationale behind a multiplier. And also the process for negotiating the fee in this case I think would be really helpful for me to address whether or not that was negotiated separately, whether it was negotiated altogether, whether it was contemplated that this

was, in effect, a $6 million common fund or a $4 million common fund with simply a separate fee ask. And then on the fee issue -- this might come up with respect to the objection that Mr. Schulman had filed on behalf of Mr. Andren.

The timing of a fee award, whether or not it makes sense to award it now, defer until the claims process is over, do some combination of both, a partial award now with a holdback. So to the extent that there is an objection over the fees, whether or not the timing would address any of those objections.

So those are the areas of inquiry, at least off the top of my head, that I certainly hope would be addressed. I might have some other questions as counsel goes on. Again, my apologies. It's a little bit scatter shot, but hopefully you can incorporate and maybe you probably already planned on addressing a lot of those issues. I thought it might make sense for all of you to know my thinking before you got into any presentations here today.

So with that, Miss Soffin, I would be glad to hear from you as to why I should approve the settlement in this case.

MS. SOFFIN: Thank you, Your Honor. I can readily address each one of your points and hopefully in a very good order with just a little bit of an intro here. I would like to also give you a background of not only our hard work pre-

suit and during the investigation, but also our discussions with defense counsel during mediation and to explain to you some of the background just so you have a feel for how we got to where we are today.

So we put this in our papers, but the way that our firm works is -- particularly the group you have on here from Milberg is we focus a lot on product defect cases, which are really distinct from mislabeling cases. We do everything, but we've got a particular specialty there. We don't ever file a lawsuit unless we have expert involvement, because we take our jobs very seriously.

We want to be able to not only present to the Court that we've done our homework, but also to let the defendant know we're serious and we've done our homework and we've identified this defect and we're confident in the nature of the defect, particularly the common nature of it.

So here we retained several -- two very well-established engineering experts who performed, as we put in our paperwork, microscopy, macroscopy, all sorts of engineering techniques to help us determine what the problem was. So what we do when we're looking at a product defect case is we interview consumers.

We look at the warranty claims or the consumer complaints online. And, ultimately, we determine that it's ripe for us to take it to an expert and to invest our

financial resources and time into it. And that's what we did here. And we were correct. And, of course, they helped us explain it on a level we would never be capable of doing, because they have the expertise.

And with that, we included photographs in the complaint that came from our experts and a detailed explanation of the defect, including the galvanic corrosion that ultimately has led to the sharp edges.

And I won't bore everyone with that, because it's all in the papers. But I just wanted the Court to appreciate all of the hard work and the behind-the-scenes things that are really difficult to explain on paper and how seriously we take our jobs and our fiduciary duty to the class.

So, ultimately, that led to the filing of lawsuits across the country. And then defendant moved for an MDL; and we ended up before Your Honor after a lot of hard work, briefing of the motion to dismiss in the Angeion action and ultimately an omnibus motion. We participated in not just informal discovery, but formal discovery as well and received back production information that helped us analyze the case; the strength, the weaknesses and the value.

And one important thing, also, that we put in our paperwork is when we mediated this in October, it was unsuccessful. We didn't rush to the courthouse. We went back and forth. After a very long few days, we walked away. And

we said, "Fine. We're going back to litigation." We are certainly not a firm who takes the first offer that we have and runs to the bank with it.

We take it very seriously. We research the law where we're located, including in the Third Circuit; and we want to get real relief to the class. And that's what we've done here. This is exactly why we filed the lawsuit was so people could get new pots and pans; and, also, they happen to get $75 along with that, which is pretty successful. Another thing I wanted to note, turning to our relationship with defense counsel, we obviously walked away from the first mediation and continued to litigate.

But, ultimately, once we settled on a resolution -- I have been doing this for 18 years, and I cannot tell you how many times a defendant wants to have the least productive notice plan. Every time. Let's publish in the East Coast. Maybe someone on the West Coast will read it. That type of stuff happens so regularly, and it's very disappointing.

Here we told them we've been researching this, and we have an opportunity to do direct notice through retailers. And everyone knew that that meant that would have a higher claims rate, because it's not just -- sometimes all we have is publication, and that's the best we can do. And the law allows for that, and that's perfectly fine. But where we can do the best practicable notice, we will. And we got

absolutely no push-back from defendant. None.

I want the Court to know that, because I think it helps to tell the story of how defendant actually wants to correct the problem here. And they want to participate in a productive notice plan. And so when we're telling them we can do direct notice through Bloomingdale's and Amazon, which is one of the largest retailers, and through themself and we got no push-back, it's such a great indication of everyone being committed to having a good settlement here.

So it ended up working out, because we have some great responses. And so I can get to your first question here, which is we are actually above trend than what we thought. So we now have 115,614 claims. And we still have a few months to go.

I recognize that the objector said that the long claims period was an effort to not report claims data, but we've actually been consistently reporting claims data to the Court. I think this would be the third or fourth report. And it can show the trend, the upward trend. And it's a wonderful claims rate.

We've having a wonderful reaction. Of those 115,899, of that 94,529 picked Option 1, which is replacement plus payment of $75. So that shows you the vast majority of people are seeking that $75 payment plus just a replacement pan. And that goes to why we think that the settlement fund is

ultimately going to be exhausted. And that's pretty reasonable. We can accurately predict that. Because as you probably saw from our response to the objector, we've gone to the most conservative number.

I think we cut it in half and then said even then, we're going to exhaust the $75. Also, importantly, I think as Your Honor noted, we didn't even include all the other costs to All-Clad that I'll let Mr. Dalton get into later. That's going to be twice, maybe three times the amount of the $4 million. We did not include -- again, I'll let Mr. Dalton go to that.

We did not include that in our fee request, but I think the law would have allowed us to, certainly, because it's the value to the class would include the actual new product. It would include the shipping. It would include all of that. But we didn't include that, because they were comfortable with where we were.

THE COURT: I think I understand this, but just to confirm and clarify, so the $4 million, that just covers the cash payment here; is that correct?

MS. SOFFIN: Yes, Your Honor, it does. And so none of those other costs are going to be coming out of it. Again, I think that goes to All-Clad's commitment to the settlement and a lot of the behind-the-scenes discussions that we had here, which were pretty heated, particularly in October. I

was accused of throwing my hands up a couple of times.

Then, ultimately, we went to February. And we continued our discussion, because we are all professionals. And another thing that I actually want to throw out there on this notice, I'm the settlement person, which is why you're hearing from me today.

I'm so picky when it comes to our settlement agreements that the amount of red lines being tossed back and forth and the land mines that you can find all over the settlement agreement are what I'm tasked with finding.

And so I also carry, along with Miss Segui and Miss Geer, that same task post settlement. We are not assigning this to a staff person in our firm or third party. They hear from us during the appeal process. We had pretty similar settlements against Sharp, Whirlpool and also General Motors.

And I can speak to all of those, but I want to talk about General Motors just a little bit. That was for replacement engine or repairs, and every single one of those people came through me. I don't know the first thing about engines, but what I do know is how to communicate with an administrator and a defense attorney.

And because of all the hard work, the case ended up costing them $6 million more than they expected. I kept going back "Pretty please" about 300 times. "This person really was

injured." And we developed a nice relationship with them. And, ultimately, that advocacy doesn't stop just because we've gotten paid.

We truly care about our class members. Again, in the 18 years I have been doing this, this is the first actual objection that we've gotten that we haven't been able to resolve in a case that I'm leading. And so -- or one of the first. I want to throw that out there as well.

Option 2 -- by the way, I just droned on and on about all the hard work we did. But Option 2, 972 people to date. Again, we expect this to trend upward. That's Option 2-1, replacement with a hard anodized HA1. And, again, as we put in our response to the objection, these are pretty expensive products, several hundred dollars. And so people are actually having an opportunity to get a better product here, not just replacement and $75, but something that might be even more expensive.

And then, not surprisingly, the replacement with the Essentials hard anodized nonstick set, there is almost 3,000. So that's 2,961 people have claimed that. They're getting a whole new set of pans. So what's really great about this settlement and what we've actually tried to incorporate in our settlements is recognize consumers have different preferences when they're injured. So we've given them multiple options for relief. So we all just like different things. And so

they have the opportunity to choose three different options.

And then, of course, for those who haven't experienced the defect yet -- and those are probably people that are just anti-dishwasher. So people are like that. I throw even my toothbrushes in the dishwasher. So everything goes in there in my house. They could have the future purchase credit, and that would be 10,401 people so far. I think that addresses your first question. Am I missing anything, Your Honor?

THE COURT: The only thing, as I assess sort of the claims rate, is the size of the class on that with respect to the number as sometimes it's hard to do with duplicate E-mails, spouses, that sort of thing. But maybe you can put maybe a little bit more detail on what you think the size of the class is.

MS. SOFFIN: Thank you, Your Honor. I did forget about that. There should not be any duplication there. So All-Clad sent out -- provided E-mail notices for people who actually purchased the product from All-Clad.

So it wasn't from like a list of names of people who have registered a product, for example. And Amazon, I believe Amazon did it themselves. Again, based on their own direct purchasers. And then a couple of the retailers provided Angeion with their own direct purchases. So every single person in that 800,000-plus should have been a unique

purchaser. Harper is nodding, so I said that right.

THE COURT: So, then, if I sort of add up essentially the mailings between Angeion and Amazon, Crate and Barrel, Williams Sonoma, when I did it before, I got a ballpark of about 800,000, a little bit more than that. So that's your understanding as well?

I know sometimes it can't be figured out to precision, but here there's not a situation where -- I guess what I was not entirely sure about -- and I think you addressed it -- is whether or not some of the notices that went out directly by Angeion were duplicative of purchases through the retailers. And it sounds like that's not the case?

MS. SOFFIN: That is the not case, Your Honor. They are unique purchasers. I think you also had a question -- your SPAM question was in my next. I'll get there.

THE COURT: Just give me a second here. (Pause.) If I'm doing the math right, then the claims rate roughly at least as of today is about 15 percent; is that right?

MS. SOFFIN: That sounds about right, Your Honor. We're pretty proud of that number. We usually stay in the three to four percent range with publication.

THE COURT: Can I ask you this, and this is -- maybe this is based more on counsel's prior experience. But do you see a higher -- in my mind sort of common sense would dictate

a higher claims rate for a premium product. I'm trying to think of a products case where it would be more in the -- not necessarily consumer product, but something that's not a -- I would like to refer to -- and maybe the All-Clad people like me to refer to it as a premium product.

It's not like the pots and pans I have in my house that I got from -- I don't know, Kohl's, many years ago when we registered for our wedding. This is the good stuff. And so, I mean, how does that affect the claims rate in a case like this and also just kind of the nature of a refund/repair type of settlement process? Bad question, but hopefully you know what I'm driving at.

MS. SOFFIN: I thought it was a great question. And I understand what you're asking, Your Honor. The answer is a little more layered than that. I think the response rate that we get is more about the relief than necessarily the product. Certainly people that are able to access premium products might have a better opportunity to submit a claim or more opportunity. That's just a reality of society.

Here I think because of the nature of the direct notice that we were able to get, plus the replacement product and cash component, I think it's the nature of the relief that brought the higher claims, partially coupled with the premium product. But knowing that it was a premium product and knowing the type of consumer that we were representing in the

class is what led to the relief that we have here as well.

THE COURT: Okay. All right. Thank you. I appreciate it. Please proceed. I don't know if there is other areas --

MS. SOFFIN: I could just talk forever. Ask anybody who knows me. But I'll try not to. So the E-mail notices to SPAM, I think they would -- they get bounced back. I know that. I don't know if SPAM is going to lead to that. But I will say, given the number of claims that we have received and the approximate 15 percent claims rate, I do not see SPAM being any kind of problem at all here.

So the process for refund and replacement, I'm going to defer to Mr. Dalton on that. I will say that the one objector that we had who was concerned about it -- it was a fair concern, of course. We have to cook our food. We immediately got on the phone with Mr. Dalton and Miss Bayly, and we brainstormed about it and are confident -- I'll let Mr. Dalton discuss it. We're able to get this down to a few weeks.

And there are approaches that we're talking about, including sending pictures and things like that. I can only anticipate, because of our relationship with defense counsel and because what we know of All-Clad as a company, that we're just not going to have that hard of a time in the claims process here. And they don't want people out there having a

pan with a sharp edge or one knowing that the consumer is a dishwasher user is going to continue to manifest and get worse. I just don't foresee that problem. I have been doing this long enough to predict, but Mr. Dalton might have more comments.

THE COURT: Mr. Dalton, feel free to address that at this point, if you can. I think it's -- I'm glad, Miss Soffin, you raised, also, the pictures. I went on the website, the class website, and was looking at the claims form.

And I was almost -- I was kind of curious as to whether or not there is a process such that you can upload images of the photographs. Because one issue I could see is somebody -- and I think it's not only a negative to the class, but a negative to the defendant here.

They pay for the shipping of a product, and it gets there, and it's perfectly fine. Because it's clearly -- either the class member misunderstood what the options are or it doesn't have sharp edges. And you paid for a shipment, and I presume you paid for it to go back, and you don't pay the claim. I was kind of curious internally what the process was for providing proof of the defect upfront before shipping.

MR. DALTON: Sure. If you don't mind, Judge -- Attorney Soffin, if you're okay with it, I'll address your questions, Judge. Yes. Once we received that inquiry from

the other class member who did not want to be without his All-Clad pans -- understandably, because they are fine products, as Miss Soffin noted.

And because All-Clad and plaintiffs, we want to make sure the class members get the relief in a timely fashion. So we have been working together, along with All-Clad internal returns folks and the notice administrator, Angeion, to streamline the process.

It is as Your Honor suspected. What we are working to do is that given the bulk of the claims are for -- 115,000 of these claims, the bulk of them are for replacement. And rather than have folks -- I was going to say out of pocket, but out of pan for several weeks while it went through the process, we're going to notify those folks that we're still working through it, as Miss Soffin said. Notify those folks that we want to expedite the process for them, and here's how we would like to do it. Have them send in pictures of the cookware, to Your Honor's point, just to ensure that it's the D3/D5 or LTD cookware.

That's stamped on the bottom of the pan or the pot so that very simply the class member can take a photo of the bottom, demonstrate that it's the proper product that's at issue here and then take a picture, photograph of the edge of the pan or the top of the pot. And I guess perhaps this is a point, Judge, where we might have been able to provide, but we

do have some exemplar photos.

In fact, the class member -- the class representatives' photos are very exemplary of the issue that can, unfortunately, develop in certain instances. It's demonstrable. You can see that the edge of the product -- it's in the papers. The pans are layered clad materials. So there is either three layers or five layers.

At the top of the pan, the edge, if you will, it can become thin. It can become brittle. I think one of our class members actually cut his finger on the pan. We don't want that happening. We don't want that happening. And we want to get these products out of the market as quickly as possible.

So to expedite that, have class members send in a photo. We can examine them, examine the photos as pretty evident. That's part of All-Clad's general warranty process as well; let's take a look at what the issue is.

That will save the problem of somebody sending in their cookware, being without it a couple, three weeks or I don't know how long it might take, given supply chain and processing. So rather than have that happen, create a more streamline and expedited process to examine and bring in the products. Of course, if it's on the fence, please send it in; and we'll look at it.

The costs Your Honor asked about. All-Clad's shipping costs generally are -- we have an Enterprise package.

It's $30 roundtrip. So if you're going to send a pan in, it cost All-Clad $15 to send it in. If you're going to send it back, it cost $15 to send it back. So every one of these returns is going to be $60 out of All-Clad's pocket. In addition, the costs of replacement product under the settlement, the structured range is basically anywhere from $35 to $150.

We're talking a not insignificant amount of money. And this is all in addition to and beyond the $75 payment for those folks whose product did experience this issue and for which All-Clad is standing behind the product and its customers and its brand and trying to do right by their customers.

Other costs that are coming up, Judge, is it looks like, given the volume of claims, the notice cost, as represented in the approval papers, are going to probably exceed a half million dollars, notice and administration costs to handle all of this. And, to be quite candid, if you have any family members down in Canonsburg that might need a job, it looks like All-Clad is going to be hiring some part-time folks, some temporary staff to help expedite this processing.

THE COURT: I was going to ask about the staffing here. Sometimes these types of settlements that have nonmonetary components seem like a great idea when you're agreeing to them. And then when you go back to your client,

it becomes a little bit more hairy when you're actually administering it. It sounds like there is going to be some more manpower here needed.

MR. DALTON: Judge, if you would like it, I can share with you at this point a three-page flow chart for claims processing. That's not including the boxes and stuff. That is just all of the decision. It's going to entail a good bit of work at All-Clad and at Angeion. But, ultimately, the end result that we want to see is that the customers get what they wanted and get it as expeditiously as possible.

THE COURT: Can I ask you, in terms of -- well, there is a couple questions. One is I think you mentioned the $35 to $150. Is that for the replacement products for Option 1 only? My understanding is that the Option 2 one is a higher value?

MR. DALTON: Right. Let me look it up now from the client here. The Option 1 starts at $35. I don't have the high end of that, but we're talking at a minimum of $35. Option 2 is, I believe, $50. And Option A-1, A-2 and A-2-B is $150. Again, the first option, the replacement option for the cookware, as plaintiffs' counsel reflect in the papers, we're talking about retail cost products that are $60, $100, $150. Attorney Bayly may be able to speak to that more directly. She received a set of All-Clad as a housewarming gift when she moved last year.

THE COURT: So, then, the $35 one is not -- that's not the retail price. Is that basically the cost without the profit margin to All-Clad?

MR. DALTON: Correct. That's the base price. And I can say parenthetically that, as Your Honor might expect, given recent challenges with the supply chain -- and I don't mean to say this improperly -- margin has gotten thinner. Costs are increasing. So it's at least a minimum $35 cost. And, again, it will go higher depending on the type and size of the pot or pan involved.

THE COURT: Just so I understand, did you say $30 roundtrip for shipping or $60?

MR. DALTON: $30 roundtrip. As long as you're not doing an open draw, but you're going back and forth. If there is a third stop involved, it might cost more. $30 roundtrip. To put a point on it, it's not an insignificant cost that All-Clad is going to incur here.

Let's say it's 100,000 exchanges or returns. I don't know what the ultimate number is going to be. But we're returning about -- Attorney Soffin can correct me -- 7,000 claims per week are coming in.

THE COURT: As I'm doing the math, I'm just -- let's just like -- Option 1, 94,000 people have selected Option 1. Let's say they've all returned something of the lowest pot or pan, which would be a cost to All-Clad of $35. And let's

assume with that comes a shipping cost on top of that of -- would you add $60 to that to get a $95 cost for shipping plus the product?

MS. SOFFIN: $30 for the shipping.

THE COURT: I'm sorry, $30.

MR. DALTON: Let's call it a $65 exchange for the very lowest end product times 95,000. It's a big number that starts with a six.

THE COURT: You're looking at in excess of $6 million. Okay. With respect, then, to Option 2, the two product lines, again, if I'm right in understanding it, those are necessarily going to be more -- are those necessarily going to be more expensive? My sense is those are sets as opposed to --

MR. DALTON: Those are sets, and those are fixed.

THE COURT: Okay.

MR. DALTON: That's not going to vary. We are receiving -- and I pulled it up here. When I pulled it up, that's what caused my speaker to go off. We have a request for about -- it looks like about 1,000 of the A-2, which is the $50 replacement cost. So we call that $80 times 1,000, 80K. And then the third one is about 3,000 returns. It's $180 times 3,000. That one I cannot do in my head.

THE COURT: Okay.

MR. DALTON: $520,000, I think. Yes.

THE COURT: That conveniently adds up to $600,000.

MR. DALTON: So we're looking at almost, Judge, $7 million in replacement product. And returns, in addition to the kind of hidden costs of additional staffing, just the things it's going to take to necessarily process all of this.

Your point was well-taken that the devil is in the details when you get down to this, which is we worked out the relief for the class, which I think is very good, as evidenced as being satisfactory based upon the response of the class in this instance. And implementing the relief is an additional cost as well.

Your Honor did ask -- I have a recollection that Amazon responded in terms of the efficacy of their notice. And I believe that they had -- and my learned counsel will correct me if I'm wrong -- almost a 99 percent success rate on their E-mails. Because, as you might imagine, we all keep our Amazon accounts up-to-date, because we don't know when we're going to need that next item from them, particularly given the last two years of living off Amazon.

So I think we've got a very good penetration rate on the notice. And one other thing to what Miss Soffin indicated. My experience, Judge, a lot of it has been in the automotive sphere. I've had a couple decades of representing a couple of auto manufacturers. And in those instances, we have the ability to obtain vehicle registration information,

which gives us, ultimately, the addresses of the various class members.

So I am accustomed to providing direct notice, as we've done here with this E-mail notice. I do think it's probably the best notice practicable, in addition to simply being E-mail notice. These are among All-Clad, Amazon, Macy, Bloomingdale's, Crate and Barrel, Williams Sonoma.

These are the primary retailers through whom All-Clad sells its products. It does some online sales itself, but predominantly through third retailers. These are the biggies accounting for pretty much most, if not all, of All-Clad's sales channels. So I really think we've done a good job of covering the waterfront of potential class members.

THE COURT: Okay.

MR. DALTON: And I'll stop talking and let Attorney Soffin continue.

THE COURT: All right. Thank you. No. That's very helpful. I appreciate it. Miss Soffin?

MS. SOFFIN: I have nothing else to add to that, unless Your Honor would like me to address something.

THE COURT: So just a couple of the other things. I think I had mentioned the calls that were fielded. To me that's kind of an important data point, if there is a common either question or complaint that was received. Do you have a sense as to any of those calls and whether there are any

common issues?

MS. SOFFIN: Yes, Your Honor. It won't surprise you that the common issue we're getting is "How do I return my cookware?" And "When do I know?" The wonderful thing about this settlement and the direct notice and having all this contact information for consumers is we can just update them and tell them.

And we'll make sure that if we don't get them the first time, we'll get them the second time. And we'll continue to follow up with them so that way they know. We don't ever want to be immobile when we're at this phase of the settlement. We want to make sure that we're modifying, updating and doing the right thing.

So we're continuing to be mobile in that regard and make sure that everyone is going to be able to return their cookware.

THE COURT: Then am I right that -- to the extent there are issues that pop up during the dispute resolution process, the sharp edges, Miss Soffin, are you and your firm still going to be involved in that process on behalf of the class?

MS. SOFFIN: Yes. We never leave them hanging. It's not going to be staff people. It's going to be us ourselves handling that. That's, again, just a part of the package.

THE COURT: Okay. Then I think the other major kind

of issue, then, is just the attorney's -- service award and the attorney's fee issue. You can address that, too.

MS. SOFFIN: Yes, Your Honor. I'll start with the service award first, because I think it's the less complicated component. Again, just the way that we practice law, particularly in product defect cases, there is so much involved from the class members; talking about exactly what happened with their pans here, how they used it, how often they put it in the dishwasher. Then lending their name in a public filing.

These people have lives. They have jobs. They're not only putting their name in a lawsuit, but they know that one day they may get deposed. That's a really big deal. I've never sat for a deposition before. I don't think I want to be questioned by myself. We don't need to get into the specifics of that, Mr. Dalton. It's a big deal to even make that commitment.

And then what we do as a firm is we're regularly communicating with our clients, updating here, responding to discovery requests, letting them know they were available during three days of mediation, multiple months of negotiations of the settlement. They understood everything that we were doing with our experts. And, of course, we had to communicate with them back and forth, because you bring it from anecdotal to confirming the actual problem.

So I can understand this hesitance to give service awards, but I always -- when I have these discussions with courts, I just want there to be an understanding that they're just private people putting their names out into the public world. And the second they make that commitment, they don't know where that's going to lead. But we've given them an idea of where it could lead, and that's a big deal. They've been very active, and we've been active with them.

THE COURT: Okay. Then on the fee issue, you know, that's always a little bit difficult for me in a class action setting with respect to multipliers. Courts are all over the place with respect to multipliers. Anyone can cite any case and say a multiplier of four is very appropriate or a multiplier of ten is very appropriate or a multiplier of one.

I would like to provide some analytical honesty. And I think it helps counsel, including class counsel, in terms of cases as to how a court is to assess whether a fee award deserves a multiplier. Maybe it's like what's the high-end multiplier? And what do you see as class counsel's ability to get that sort of high-end multiplier? What is sort of a middle range multiplier? And what is a no multiplier situation?

MS. SOFFIN: Well, Your Honor, our multiplier is probably a lot lower now that we have final approval and given all the back-and-forth that we've had to go through, but we

can go with what we put in there. I would consider our multiplier to be pretty moderate. We've put in so much work here.

You know, you have -- there is all kinds of plaintiffs' law firms out there; right? We're, again, the type of law firm who is going to commit financial and labor resources to a case before we even file it. We don't file and then worry about it later and hope that the defendant is just going to be scared. We want to give them a reason to be concerned.

And so we've done that here with tens of thousands of dollars in expert work, finding who we believe are the best in the country, who not only identify the defect but were able to provide us with photographic evidence of it.

That is not what everybody does. I know that, having been in this world for a while. And we put pen to paper. We strategize about where to file across the country. Ultimately, it ended up before Your Honor with the JPML. But we've put in just so much work and dedication. And we were right. Not only did we commit the resources upfront, but we were correct in ultimately it led to where we are today.

So I do believe we put in the work for this moderate multiplier. Again, all the litigation that's gone into it after that. The briefing, the motions to dismiss, the multi mediations, walking away from the mediation because we didn't

at that moment believe that what we were talking about was a sufficient benefit to the class. And, ultimately, we got there through productive communications with defense counsel, lots of litigation and lots of expert work. I could say that 300 different ways.

THE COURT: Maybe walk me through the process of how you kind of negotiated the agreement with respect to the fee component. I may have even said this maybe in our first status conference. I know that sometimes it helps a court down the line when the process is -- you know, we reach a deal; and we table attorney's fees for another time.

I know that doesn't always happen. Because from a defense perspective, maybe there is a pot of money they're not going to go above. Maybe walk me through that process.

MS. SOFFIN: You're going to test my memory a little here. I can tell you in practice we don't ever touch, discuss or even go to the place of attorney's fees until we have an agreement in principle on all of the material terms of the settlement.

That's risky. Because sometimes when we do that, the defendant is like "No. We're going to leave it to the Court." Or you're going to do lodestar only; no multiplier. This could just lead down to many different paths. So we absolutely did not touch, address anything with attorney's fees until we had it in writing what the class was going to

get. And it was an entirely separate negotiation.

THE COURT: So on that, so you had the agreement with the class. Then I presume the separate agreement was basically the clear sailing provision and how high or how low that would be. Is that a fair assessment as to the nature of the fee negotiations?

MS. SOFFIN: I think that's a fair assessment. It was certainly separate. Miss Segui, did you want to jump in?

MS. SEGUI: Harper Segui on behalf of the plaintiffs. I was a little closer to some of the settlement negotiations leading up to our final mediation. But once this case was consolidated before Your Honor, I think you know the history of us re-engaging in settlement negotiations, but we didn't request a stay of litigation, because we just weren't sure how that was going to work out.

So specifically Mr. Dalton and I spent a good -- I don't know, probably six or seven months, maybe, of negotiating pretty regularly more so than we typically do leading up to our final mediation with the goal of having the material terms of the settlement and the benefits for the class members really almost near final by the time we got into that final mediation.

We just set aside one day with Judge Anderson, who is a fantastic mediator and just well-respected mediator in class actions and product defect cases as well and mislabeling, as

this is sort of a hybrid of that. By the time we got in there, we had pretty much hammered out just six or seven months' worth of benefits to the class, truly.

And when we got in there, I think the attorney's fee negotiation, that mediation went until about -- it was pretty late at night, I want to say 10:00 or 11:00 or maybe later. That was the very last component. I mean, maybe like an hour or two of that was the attorney's fees trailing at the end, but everything else had been pretty much established and very hard thought more so than a lot of our other cases.

I do want to also note, I have not incredible MDL experience, but I have significant MDL experience. And I will say that for a plaintiffs' fee, this is the lowest I've ever requested in an MDL context. I realize this is a smaller MDL than others for the reasons you've probably already seen; the same attorneys, same cases, all of that, as opposed to a dog fight that some MDLs can become. This is, in our experience, a pretty reasonable request. So I will be quiet and let Miss Soffin take back over.

THE COURT: Thank you.

MR. DALTON: Judge, if you want, this is Chris Dalton. I can just comment upon what class counsel said and confirm. We spent a significant amount of time prior to going to Judge Anderson to work out the vast majority of the relief to the class. There were some open items that we just

couldn't agree on without the assistance of Judge Anderson.

Frankly, one of them was the monetary relief that's provided here, the $75. And that was a hard fought part of it. And then we kept -- we never talked about the question of what the attorney's fees were going to be. We adamantly kept that off the table, and that's been my experience in doing these.

Unfortunately, I have settled more class actions than I would like to, but that's just because I'm a jaded defense attorney. But, no, we maintained the separateness of those two items. And that was -- the end result was facilitated through Judge Anderson, and it was still a hard fought position. I do think Miss Segui might have been annoyed at me.

THE COURT: That's a good sign. That is one of the factors I considered.

MS. SOFFIN: I don't deny it, too.

MR. DALTON: Everybody was annoyed with me.

THE COURT: Okay. The last point, I guess. And I mentioned this before. It may have come up in the context of the objection that was filed, or maybe I was just thinking of it. Timing of any attorney's fee award and what is the plaintiff requesting here and whether the timing of any payment can address any of the concerns over the -- or the objection raised with respect to the fee award in this case.

MS. SOFFIN: Your Honor, I want to make sure I say the right thing here, because it is certainly a touchy component. And I want to address all of Mr. Schulman's and Mr. Andren's concerns and objections. The law in the Third Circuit, I think, allows district judges quite a bit of discretion. The way I have been sort of thinking about is, you know, north, south, east, west.

There are so many things. But what's the ultimate thing that the Third Circuit requires? I think it's two things, if I'm processing a million cases that I read properly, which is, one, can we determine with a reasonable degree of accuracy what the ultimate benefits are going to look like? I think we've done that.

We've been consistently communicative with the Court and with each other about what the claims are going to be. Our estimates to the Court have now been exceeded. We're at more than 5,000 a week.

When we provided our response to Mr. Andren's objection, we went to the lowest common denominator. If I would have known it was $30 shipping, I would have thrown that in there. I did $9. We put in there really conservative numbers. We did not include in the valuation, obviously, the other 6 million or so dollars that Mr. Dalton discussed. I think we could have.

I think the law would have allowed us to include that

relief. It's not really nonmonetary. They're getting an entirely new pot and pan. And it's monetary to All-Clad, certainly. They're going to feel that.

So, again, we were so conservative when we did this. We negotiated the fee separately. We did that three to four range. Obviously, All-Clad was taking -- hoping it would probably be lower. And we really believed it was going to be higher because of the wonderful notice plan. It was really robust.

So I think we've met and even exceeded what the Third Circuit requires in that regard about being able to estimate what the ultimate claims are going to be. It's going to be we're likely going to exceed that $4 million with the $75 payment. That's pretty easy math right there.

The cost of the claims administration, which is -- I understand that Mr. Andren cited -- or Mr. Schulman cited out of circuit case law. But each circuit does its own thing. The Third Circuit clearly allows for notice and administration cost to be included. That has actually doubled the cost of what we estimated.

I'm sure All-Clad's not happy about that, but it's a hard cost; and they're going to have to pay it. So that's where we have the four and a half million. And then there is plenty of case law in the Third Circuit, including coming from the circuit court itself, allowing for attorney's fees to be

determined in the entire pot. And it's just semantics at that point. We could have called it a $6 million settlement, but the fee would have been the same.

It really doesn't matter. So that whole pot is easily calculated at six and a half plus million, depending where the ultimate claims administration goes. It may end up being higher. Then, of course, all the other relief, which is over $6 million. This is easily a 12-13-plus million dollar settlement.

Again, we wanted to be conservative. We're not greedy people. So we went with the lowest common denominator there. So if the Court -- we think it can be paid now. We think we've met those burdens.

THE COURT: Okay. Thank you. Anything else, Miss Soffin? I'll give you a chance to have the last word here at the end. At this point, anything else?

MS. SOFFIN: No, Your Honor. As long as I can respond to Mr. Schulman after. I think I've said my piece and more.

THE COURT: Thank you. Mr. Dalton, anything else that you would like to add at this point?

MR. DALTON: No, Judge. Nothing further at this point. I stand ready to answer any questions the Court has.

THE COURT: All right. Then why don't we hear from Mr. Schulman. Am I pronouncing your last name correctly? Is

it Schulman?

MR. SCHULMAN: Yes, Your Honor. Thank you.

THE COURT: All right.

MR. SCHULMAN: Good morning. I appreciate Your Honor's engagement. It's really nice to see that. We don't see that in every case we're involved in. I also appreciate class counsel's frankness in not trying to hide the ball on claims data, which we've also seen in other cases.

And I think a lot of Your Honor's questions today are zeroing in -- I'm not going to regurgitate everything that's in the papers, our opposition, which I also thank Your Honor for allowing response briefing for their motion for approval, in addition to the objection.

But, ultimately, Your Honor is right that the critical question is what at the end of the day is going to come out of that claims process and the return process, more specifically.

What they've put on the record so far is that the administrator hasn't done even the preliminary review for duplication, for completeness of the claims forms. That's preliminary to class members having to return their cookware to the satisfaction of All-Clad demonstrating the sharp edges issue.

So at the end of the day Miss Soffin says that it's a conservative estimation that 50 percent will be paid out. And

then if she's right, they will exhaust the $4 million. If they do exhaust the $4 million in actual payouts, we would voluntarily withdraw our objection, as I've said in our papers, because then you would have a proportional settlement.

But if, in fact, if they're losing claims all along the way, if they're losing claims at the preliminary review process, if they're losing claims at the submission process of the cookware, if they're losing claims at All-Clad's review process, they could easily get to a situation where it's no longer -- it's not in proportion, and that remains our concern. It just hasn't yet been demonstrated to our satisfaction that it will be proportional.

The idea of deferring a fee award, as mentioned by Your Honor -- and it was in our objection -- it's a half solution, because it would prevent a situation where they're getting a disproportionate fee award. But, ultimately, then the money would be reverting to All-Clad that excess fee, rather than to the defendant.

So we've seen in other cases where the defendant -- it seems that the defendant's confident that the $4 million pot is going to be exhausted. If that's the case, then there should be no issue with them being able to relinquish their reversionary interest in that fee award back to the class. That would entirely resolve our objection, because that gets rid of the segregated fee component. It allows the class to

access the excess portion of the fee award, if it ends up being excessive.

I really welcome the Court's questions, if the Court has anything specifically.

THE COURT: On the first point you made in terms of the claims process and the D duplication and the potential withdrawal of the objection, I mean, I guess walk me through it, then. In terms of with respect to your objection, what would be the ask of me?

Would it be to defer approving a settlement until there is a point in time where there is a validation of the claims data such that we've removed the duplicates? We've determined that of the 94,000 people that selected Option 1, it turns out 84,000 of them, there is no dispute that they have sharp edges. And at that point in time it's just a matter of shipping back and forth. And at that point in time, from your perspective, there would be enough data to clearly exhaust the $4 million, but beyond that to know what the actual claims rates are. Is that really the gist of what you would be asking for?

MR. SCHULMAN: Well, it's a tricky issue, because the unique thing about this settlement -- and this is quite uncommon in my experience -- is that the claims submission is not the ultimate number. Usually that is the ultimate number.

Once you can get the validation from the

administrator, you know that that amount is going to be paid out to the class members. Here we don't have that, because you've got a further step of them having to return the cookware. So I think one way that that could be addressed here -- and this is what we suggested in our opposition to final approval, is that the parties -- obviously, you don't have the authority to force the parties to amend their settlement to remove the segregation of the fee component.

But if they removed that, then deferring the fee would resolve our complaint. Because the contingency of class members not being successfully validated after they return, then the risk is borne by both class counsel and the class, not just the class. And that's what we have here, if that makes sense.

THE COURT: It does. But it also assumes something about the attorney's fee component of the case, that it assumes it's almost like a common fund the way -- or an exhaustive common fund, I think as you argued, or constructive common fund. And a percentage of the fee is tied to the common fund.

But in light of how this case was negotiated with respect to the fee, I'm not sure it is necessarily a common fund such that knowing what the final pot of money is would necessarily determine what I do on the fee.

So maybe another way of thinking about it -- I was

thinking about this case a little bit in this sense. Let's just say this case played out in the ordinary course of litigation and goes to trial and the plaintiff prevails on a simple warranty claim or an unfair trade claim. And oftentimes the remedy could potentially be the return of the product and then a request for a fee, if there is fee shifting involved.

Setting aside the $4 million pot of money here and all that, to me that's a pretty good deal. What the settlement in this case does, it seems to go above and beyond that.

I guess it's a long-winded way of saying I struggle a little bit with the argument that I should look at this particular -- I sort of get it in other cases. But in this particular case I struggle with the argument that I should look at this as a big pot of money and that the plaintiffs' counsel is taking a cut of that such that by delaying the process I'll get a better sense of how the money is allocated. Does that make sense?

MR. SCHULMAN: It does, Your Honor. I would refer Your Honor to the Third Circuit's decision in Community Bank, which I believe is citing -- it's a 2005 decision. Sorry I don't have the cite off the top of my head.

It cites GM trucks, which makes fairly clear that just the fact that it was separately negotiated doesn't mean

that it gets outside of the constructive common fund structure, so to speak.

To do that, they would have to have the settlement approved and then negotiate the fee after. Another authority this Court can look to, I think it's the statement on -- I'm not sure if we cited this in our papers in this case. The Restatement Third of Restitution and Unjust Enrichment, which talks specifically about even though at the end of the day if they had gone through the litigation process, as you hypothesized, and in that case the fee wouldn't be part of a constructive common fund, because the defendant has never willingly never put it in the constructive common fund by agreeing to the award.

But when you do agree, then it does become a constructive common fund. I believe also Section 29 of the Restatement Third on Restitution and Unjust Enrichment talks specifically about that. And the Home Depot case out of the Eleventh Circuit, which I do think I cited, also discusses that when an amount of money becomes a constructive common fund or not. And it's based on the defendant's willingness to pay that in conjunction with the approval of a settlement. So before -- while the settlement is still pending.

THE COURT: Okay. All right. Thank you. I think I understand the argument. I appreciate the briefs that you filed and certainly the position of the group you work with.

I think it's helpful to have some additional scrutiny in every kind of class action settlement. I further appreciate the music video that you cited in your brief, which I watched a few times, which I thought was great. But thank you for that. Thank you for your argument.

Why don't we give counsel for the parties the last word, Ms. Soffin and Mr. Dalton, if you want to respond to Mr. Schulman.

MS. SOFFIN: Thank you, Your Honor. The second part, I was saving this to respond to Mr. Schulman. In addition to being able to reasonably estimate what ultimately is going to be paid out, the second part, which is probably even more important, is whether as class counsel we met our responsibility to prioritize the direct benefit to the class.

Mr. Schulman and Mr. Andren do not object to the nature of the relief. And what class members are actually getting is really confirmation that we have done that. That's exactly what we've done is prioritize what class members are going to get.

I want to address one thing that Mr. Schulman says when he says he'll withdraw his objection if we just make it a traditional common fund. When you tie that into prioritizing the direct benefit of the class, I just want to juxtapose this for a minute to the Court. If we made it $6 million total, our fee would look exactly the same. None of that would

matter.

And so what difference would it make except to potentially make sure that the defendant is sufficiently punished, which isn't the priority here. The priority here is to, first of all, get the defendant to the settlement table.

Let's talk about what we do in litigation, right, on the real level, get away from all of the intellectual discussions about the case law, but in the real world what we need to do is we need to get the defendant to the settlement table as soon as possible so class members are not waiting out there for ten years for relief. And not only get them there as soon as possible, but do a really good job and prioritize the direct benefit to the class. We've done that in the real world on the litigation level.

So, again, this whole make it $6 million instead of what we've got here, even though the plaintiffs will get the same exact fee, because we would certainly fall into that 20 to 40 something percent of the fee, it would still be 1.9-something million. Nothing would change. So I think that to us it's a bit confusing, that argument.

To the case law, back to the intellectual things that happen after litigation on the ground level, we've cited Laniman for Your Honor, which confirms -- I mean, Laniman and Comcast are such interesting examples. And Laniman is a Third Circuit case. Comcast is a district court case. But in

Laniman, Third Circuit, a 2016 case, fairly recent, the fund was $625,000. Only 300 of the 20,000 people had claimed benefits.

The attorney's fee was set to be $208,000, which is one-third of the fund made available to the class. And, ultimately -- I don't have it written down here. $58,000 of the amount made available was all that was claimed. So, of course, the objector came in. And they said, well, how is it possible that the attorney's fee can be $208,000 when the class members are only getting $58,000?

And the Court went back and said, "Let's look at what matters." What matters is they've prioritized the direct benefit to the class. Lots of things can happen in the claims process. What we know here is that All-Clad wants to remedy the problem.

Miss Segui, Miss Geer and I are going be in here managing the claims process, which is our duty. And we're going to do a good job of that, just like we've done in every other product defect case. We take it very seriously.

We don't want consumers upset with us. All-Clad doesn't want consumers upset with them. Here again, the Court awarded the fee and said what matters is the benefit that you made available to the client, citing baby food, citing Boeing. It is the opportunity for class members to share in the harvest.

And so Comcast, same type of thing, district court case. That was a settlement value up to $15.5 million, class size of three and a half million subscribers. Despite a robust notice program, they had only 20,000 of those 3.5 million people filed claims totalling $211,000 and some sort of additional, really, for $280,000.

So they said the courts approved the settlement, gave the awarded class counsel a $1.1 million fee, despite the cash payments totaling only $211,000, because of the $15.5 million made available to the class, because of that risk that defendant took in potentially having to pay that amount.

That is the harvest they made available for class members to participate in. Whether they did is not what we're talking about. We're not here to punish the defendant. I mean, that's part of the process, right, because they've got to be held responsible for what we've alleged is their misconduct. But what's more important is, what are the class members getting? What is their opportunity to participate in this?

So, there again, they approved the fee talking about any claims that are not made -- although, here again, we're pretty confident we're going to exhaust the fund, but any claims here, it's not a failure of class counsel. What matters is, what was available? What was the risk that defendant bore? I just wanted to point that out.

Again, Laniman is a Third Circuit case. It's really spot on here to what we've got going on. And we've met and exceeded what happened there, because we're going to exhaust the fund.

THE COURT: All right. Thank you. Mr. Dalton?

MR. DALTON: I have nothing further to add, Judge. Unless you have any questions.

THE COURT: Okay. I do not. I appreciate the information and argument and presentation from all counsel here. I appreciate everyone working very diligently and hard in reaching a resolution. I will say my inclination is to approve this settlement.

As I said, I think the real value in this is to me it's not the -- I think it's the cherry on top is the $4 million fund, but I think the real value in this settlement here is the premium, the new premium replacement products that are being sent to these class members.

And so a settlement in a warranty case in which there is a claim of a defect and the class members are getting a brand new replacement product is to me essentially making them whole. And the fact that there is additional payment I think is an additional benefit to the class.

That's why I asked the questions about the claims process, because I think for me to approve it, the process for processing these claims has to be very clear and very easy.

It sounds like from the discussions that counsel have had, including with resolving the one objection, and the fact that All-Clad is open to accepting photographs and class counsel is going to be involved in the claims resolution process, if there are any disputes, gives me confidence that what we're not going to see is an illusory claims process such that -- certainly a concern raised by Mr. Schulman, such that there's not going to be a value here with respect to the class members getting their replacement products.

So I'm confident in that process, and I think the settlement is fair from that perspective. I'll take the attorney's fee arguments and the petition under advisement, along with the service award request.

I want to look at the cases that have been cited here today as well as in the briefs and look at those more closely and reach a decision on that. I wanted you to hear my thinking, at least. And I appreciate everyone working hard, and I appreciate the good work by all counsel here and the participation also of Mr. Schulman on behalf of your client as well.

MR. SCHULMAN: Thank you, Your Honor. Can I say one thing to your initial inclination?

THE COURT: Sure.

MR. SCHULMAN: Which is there is two reasons I don't think you should look at the replacement products as the

central relief in this case. The first would be if you look at the claims submission numbers that they give, the vast, vast majority are for the $75 replacement of the low end rather than the $700 retail cookware set.

Whereas, if that was -- so the revealed preference of the class members is for the $75 cash relief. That's the first thing. The second I would say is if, in fact, the class members' pots and pans were so defective that they needed to discard them, they can't even get that recovery under the settlement terms, because they wouldn't have the pan any longer; right?

So the fact the class members held onto the pans and the fact -- the other objector mentioned this fact -- obviously, going without them for some length of time is going to be a detriment to them. It's not as if they're going from a zero situation to a new pan. There is some sort of an offsetting cost there. Just throwing that out there. Thank you.

THE COURT: Okay. Thank you. I'll note and appreciate that as I sort of take it under advisement. Anything else, Miss Soffin? Anything else from you and your team?

MS. SOFFIN: No. Thank you for your time, Your Honor.

THE COURT: Thank you. Mr. Dalton?

MR. DALTON: No. Again, thank you, Judge, for your time and consideration here.

THE COURT: All right. Thank you, everyone. I appreciate it. Take care. Have a good day.

(Whereupon, the above-captioned matter was concluded.)

C E R T I F I C A T E

I, NOREEN A. RE, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled case.

s\ Noreen A. Re — **March 1, 2023**

NOREEN A. RE, RMR, CRR — **Date of Certification**

Official Court Reporter